

## United States Postal Service

## § 230.20

of Information Act and shall be handled pursuant to 39 CFR 230.5.

### **§ 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?**

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested information. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

### **§ 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?**

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official. If the authorizing official al-

lows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

### **§ 230.20 What records will not be released?**

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter,

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to

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confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an in camera, ex parte conference to determine the necessity for the release of the information.

### **§ 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?**

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

### **§ 230.22 May another employee be substituted for the employee requested to appear?**

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

### **§ 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?**

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

## **39 CFR Ch. I (7–1–04 Edition)**

### **§ 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?**

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.601(b) shall be made in writing and conform to the following requirements outlined in paragraphs (b) and (c) of this section.

(b) Before or simultaneously with service of a demand, the requesting party shall serve on the General Counsel to the Inspector General at the Office of Inspector General, 1735 North Lynn Street, Arlington, VA 22209–2020, a summons or subpoena issued in accordance with the appropriate rules of civil procedure along with an affidavit or sworn declaration containing the following information:

- (1) The title of the case and the forum where it will be heard;
- (2) The party's interest in the case;
- (3) The reasons for the demand;
- (4) A showing that the requested information is available, by law, to a party outside the Postal Service;
- (5) If testimony is sought, a detailed summary of the anticipated testimony;
- (6) If testimony is sought, a showing that Office of Inspector General records could not be provided and used in place of the requested testimony;
- (7) The intended use of the documents or testimony; and
- (8) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

### **§ 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?**

(a) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including the cost of transcripts, shall be borne by the requesting party. Furthermore, unless limited by statute, such costs shall also include reimbursement to the Office of Inspector General for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the